

CENTER FOR DISABILITY ACCESS
Chris Carson, Esq., SBN 280048
Dennis Price, Esq., SBN 279082
Amanda Seabock, Esq., SBN 289900
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Orland Sylve,

Plaintiff,

v.

ROIC California LLC, a Delaware
Limited Liability Company; and
Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Orland Sylve complains of ROIC California LLC, a Delaware Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a quadriplegic who cannot walk and who uses a wheelchair for mobility.
2. Defendant ROIC California LLC owned the real property located at or about 243 W. Jackson Street, Hayward, California, in December 2018.

1 3. Defendant ROIC California LLC owns the real property located at or
2 about 243 W. Jackson Street, Hayward, California, currently.

3 4. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein,
8 including Does 1 through 10, inclusive, is responsible in some capacity for the
9 events herein alleged, or is a necessary party for obtaining appropriate relief.
10 Plaintiff will seek leave to amend when the true names, capacities,
11 connections, and responsibilities of the Defendants and Does 1 through 10,
12 inclusive, are ascertained.

13
14 **JURISDICTION & VENUE:**

15 5. The Court has subject matter jurisdiction over the action pursuant to 28
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 6. Pursuant to supplemental jurisdiction, an attendant and related cause
19 of action, arising from the same nucleus of operative facts and arising out of
20 the same transactions, is also brought under California's Unruh Civil Rights
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
23 founded on the fact that the real property which is the subject of this action is
24 located in this district and that Plaintiff's cause of action arose in this district.

25
26 **FACTUAL ALLEGATIONS:**

27 8. Plaintiff went to the property to visit the CVS store in December 2018
28 with the intention to avail himself of its goods or services, motivated in part to

1 determine if the defendants comply with the disability access laws.

2 9. CVS is a facility open to the public, a place of public accommodation,
3 and a business establishment.

4 10. Parking spaces are one of the facilities, privileges, and advantages
5 offered by Defendants to patrons of CVS.

6 11. Unfortunately, even though there were parking spaces marked and
7 reserved for persons with disabilities in the parking lot serving CVS during
8 Plaintiff's visit, the parking stalls and access aisles located directly in front of
9 CVS were not level with each other because there were slopes that exceeded
10 2.1%.

11 12. Currently, the parking stalls and access aisles serving CVS are not level
12 with each other.

13 13. Defendants have failed to maintain in operable working condition those
14 features of facilities and equipment that are required to be readily accessible to
15 and usable by persons with disabilities at the Subject Property.

16 14. Plaintiff personally encountered these barriers.

17 15. This inaccessible facility denied the plaintiff full and equal access and
18 caused him difficulty.

19 16. The defendants have failed to maintain in working and useable
20 conditions those features required to provide ready access to persons with
21 disabilities.

22 17. The barriers identified above are easily removed without much
23 difficulty or expense. They are the types of barriers identified by the
24 Department of Justice as presumably readily achievable to remove and, in fact,
25 these barriers are readily achievable to remove. Moreover, there are numerous
26 alternative accommodations that could be made to provide a greater level of
27 access if complete removal were not achievable.

28 18. For example, there are numerous paint/stripe companies that will come

1 and stripe level parking stall and access aisle and install proper signage on
2 rapid notice, with very modest expense, sometimes as low as \$300 in full
3 compliance with federal and state access standards.

4 19. Plaintiff will return to the CVS to avail himself of its goods or services
5 and to determine compliance with the disability access laws. He is currently
6 deterred from doing so because of his knowledge of the existing barriers. If the
7 barriers are not removed, the plaintiff will face unlawful and discriminatory
8 barriers again.

9 20. Given the obvious and blatant nature of the violations and barriers
10 alleged herein, the plaintiff alleges, on information and belief, that there are
11 other violations and barriers on the site that relate to his disability. Plaintiff will
12 amend the Complaint to provide proper notice regarding the scope of this
13 lawsuit once he conducts a site inspection. However, please be on notice that
14 the plaintiff seeks to have all barriers related to his disability remedied. See
15 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
16 encounters one barrier at a site, he can sue to have all barriers that relate to his
17 disability removed regardless of whether he personally encountered them).

18
19 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
20 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
21 Defendants.) (42 U.S.C. section 12101, et seq.)

22 21. Plaintiff re-pleads and incorporates by reference, as if fully set forth
23 again herein, the allegations contained in all prior paragraphs of this
24 complaint.

25 22. Under the ADA, it is an act of discrimination to fail to ensure that the
26 privileges, advantages, accommodations, facilities, goods and services of any
27 place of public accommodation is offered on a full and equal basis by anyone
28 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.

1 § 12182(a). Discrimination is defined, inter alia, as follows:

- 2 a. A failure to make reasonable modifications in policies, practices,
3 or procedures, when such modifications are necessary to afford
4 goods, services, facilities, privileges, advantages, or
5 accommodations to individuals with disabilities, unless the
6 accommodation would work a fundamental alteration of those
7 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 8 b. A failure to remove architectural barriers where such removal is
9 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
10 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
11 Appendix “D.”
- 12 c. A failure to make alterations in such a manner that, to the
13 maximum extent feasible, the altered portions of the facility are
14 readily accessible to and usable by individuals with disabilities,
15 including individuals who use wheelchairs or to ensure that, to the
16 maximum extent feasible, the path of travel to the altered area and
17 the bathrooms, telephones, and drinking fountains serving the
18 altered area, are readily accessible to and usable by individuals
19 with disabilities. 42 U.S.C. § 12183(a)(2).

20 23. Under the 2010 Standards, access aisles shall be at the same level as the
21 parking spaces they serve. Changes in level are not permitted. 2010 Standards
22 502.4. “Access aisle are required to be nearly level in all directions to provide
23 a surface for wheelchair transfer to and from vehicles.” 2010 Standards §
24 502.4 Advisory. No more than a 1:48 slope is permitted. 2010 Standards §
25 502.4.

26 24. Here, the failure to provide level parking is a violation of the law.

27 25. The Safe Harbor provisions of the 2010 Standards are not applicable
28 here because the conditions challenged in this lawsuit do not comply with the

1 1991 Standards.

2 26. A public accommodation must maintain in operable working condition
3 those features of its facilities and equipment that are required to be readily
4 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

5 27. Here, the failure to ensure that the accessible facilities were available
6 and ready to be used by the plaintiff is a violation of the law.

7
8 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
9 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
10 Code § 51-53.)

11 28. Plaintiff repleads and incorporates by reference, as if fully set forth
12 again herein, the allegations contained in all prior paragraphs of this
13 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
14 that persons with disabilities are entitled to full and equal accommodations,
15 advantages, facilities, privileges, or services in all business establishment of
16 every kind whatsoever within the jurisdiction of the State of California. Cal.
17 Civ. Code § 51(b).

18 29. The Unruh Act provides that a violation of the ADA is a violation of the
19 Unruh Act. Cal. Civ. Code, § 51(f).

20 30. Defendants’ acts and omissions, as herein alleged, have violated the
21 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
22 rights to full and equal use of the accommodations, advantages, facilities,
23 privileges, or services offered.

24 31. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
25 discomfort or embarrassment for the plaintiff, the defendants are also each
26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
27 (c).)

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act, which provides for actual
9 damages and a statutory minimum of \$4,000.

10 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12
13 Dated: January 11, 2019

CENTER FOR DISABILITY ACCESS

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16 By:



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18 Chris Carson, Esq.
Attorney for plaintiff
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